REMARKS

By the present amendment, Applicant has canceled Claims 1-17 and added Claims 18-27, which remain pending in the present application. Claim 18 is an independent claim.

In the Office Action mailed September 3, 2004, the Examiner rejected Claims 1-4, 6-13 and 15-17 under 35 U.S.C. § 102(b) as being anticipate by Vento (U.S. Patent No. 6,394,423). Claims 5 and 14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Vento in view of Morse (U.S. Patent No. 3,904,393).

The cancellation of original Claims 1-17 and the introduction of new Claims 18-27 by the present amendment should serve to obviate the prior art grounds of rejection of record. Applicant will advance arguments hereinbelow to illustrate the manner in which the invention defined by the newly introduced claims is patentably distinguishable from the cited and applied prior art. Reconsideration of the present application is respectfully requested.

Independent Claim 18 has been introduced to more particularly define the subject matter in question. This newly presented independent claim sets forth a live well oxygenator that includes a vessel having disposed therein a water pump, a discharge pipe, a water return pipe, a oxygen feed valve and an overflow tube. The vessel is defined as having an inner chamber enclosed by a front wall, a top wall, a rear wall, two side walls and a bottom, wherein the front wall defines a first and a second opening therein, and the top wall defines a third and a fourth opening therein. The water pump is set forth as having an inlet positioned at the first opening in the front wall. The discharge pipe is characterized as being a U-shaped and having one

end connected to the water pump, a bend section disposed above the water pump and an open end extending towards the bottom of the vessel, wherein the bend section defines at least one venturi opening therein. The water return pipe is characterized as being L-shaped and as having one end positioned at the second opening and an open end disposed proximate the bottom of the vessel. The oxygen feed valve is set forth as being disposed through the third opening in the top wall of the vessel, and the overflow tube is defined as having one end disposed through the fourth opening in the top wall of the vessel and terminating in an opposite end disposed proximate the bottom of said vessel.

New dependent Claim 19 sets forth the disposition of the open end of the water return pipe and the end of the overflow tube as being spaced a substantially equal distance from the bottom of said vessel. New dependent Claim 20 specifies that filter screens are positioned over the openings in the front wall of the vessel. New Claim 21 sets forth that the oxygen feed valve is connected to a compressed oxygen source. New dependent Claim 22 correspond substantially to original Claims 6. New dependent Claims 23-27 define additional features of Applicant's invention.

No new matter is involved by the limitations set forth by the newly presented claims since the same find clear support in the written description contained in the original disclosure. Applicant's claimed oxygenator provides for finely divided bubbles of 100% oxygen being induced into flowing water to greatly increase the dispersion of oxygen in the water. Applicant contends that the Vento reference relied upon of record, taken alone or in combination with Morse, fails to describe or reasonably suggest a device having the combination of structural and functional features as defined by the present claims.

The patent to Vento discloses an impeller-type aerator for aerating the water supply of aquatic organisms which comprises a centrifugal pump having a first and a second impeller and a pump casing. Each impeller has an inlet edge, an outlet edge and vanes. The pump casing includes a bottom portion, a pump water inlet, a pump air inlet and a pump water outlet. The impellers are disposed between the pump water inlet and pump water outlet. The pump air inlet is positioned between the first impeller outlet edge and the second impeller outlet edge and is in communication with air. In contrast to the aerator device taught by Vento, Applicant's claimed oxygenator includes an oxygen feed valve disposed in the top section of the vessel for supplying compressed oxygen to the flowing water. In further distinction, Applicant's water pump inlet is positioned at the opening in front wall of the vessel, whereas Vento's water inlet is disposed at the bottom section of the pump casing. Furthermore, there appears no mention in Vento of Applicant's U-shaped discharge pipe with one end connected to the water pump and a venturi opening in the bend section as recited by the present claims and as disclosed under the instant specification. Moreover, Vento fails to disclose or suggest that his aerator may include a L-shaped discharge pipe as defined by Claim 18. Accordingly, Applicant contends that patent to Vento is deficient as an anticipatory reference against the present claims since Vento's aerator is structurally and functionally unrelated to Applicant's claimed oxygenator. Further, it is Applicant's contention that the instant reference is insufficient to render the presently claimed invention obvious within the meaning of 35 U.S.C. 103.

In *W.L. Gore & Associate v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), the Federal Circuit stated that "[a]nticipation requires the disclosure in a single prior art reference of each

element of the claim under consideration." *Id.*, 220 USPQ at 313. It is not enough that the prior art reference disclose all the claimed elements in isolation. Rather, as stated by the Federal Circuit, "[a]nticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, *arranged as in the claim*." Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984).

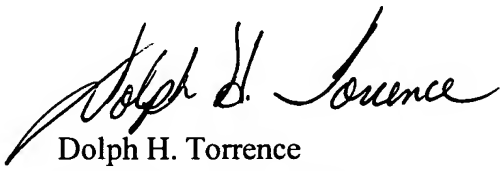
In order to show anticipation under 35 U.S.C. 102, the reference must show every element of the claimed invention identically. *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1 USPQ2d 1081 (Fed. Cir. 1986), *Akzo N.V. v. United States Intl. Trade Commission*, 808 F.2d 1471, 1 USPQ2d 1241 (Fed. Cir. 1986). Not only must every element claimed be shown in the prior art reference, but every claimed limitation of each of the elements must be shown; otherwise, the only possible rejection is for obviousness under 35 U.S.C. 103. *Atlas Powder Co. v. E.I. du Pont de Nemours & Co.*, 750 F.2d 1569, 224 USPQ 409 (Fed. Cir. 1984), *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 227 USPQ 773 (Fed. Cir. 1985).

The secondary reference to Morse, which was merely relied upon to show a second opening with a filter, fails to supplement the above noted deficiencies of the primary reference to Vento. Thus, one of ordinary skill in the art without the benefit of Applicant's own disclosure would not be capable of arriving at the presently claimed invention by combining the references in the manner suggested by the Examiner since none of references cited or applied of record realistically suggests the essential combination of features that forms the basis of the instant claims.. For at least these reasons, Applicant respectfully submits

that new independent Claim 18 and corresponding new dependent Claims 19-27 are allowable over the prior art of record.

For the foregoing reasons, Applicant respectfully submits that the present application is in condition for allowance. If such is not the case, the Examiner is requested to kindly contact the undersigned in an effort to satisfactorily conclude the prosecution of this application.

Respectfully submitted,



Dolph H. Torrence
Registration No. 34,501
(703) 486-1000

DHT:rwg